

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

Alean Hester Faust, Administratrix of
the Estate of Charles Lonnie Faust,
Deceased; Tommy Bennett and Curtis
Muldrow, Petitioners,

v.

South Carolina State Highway Department,
and the United States of America,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI
APPENDIX E

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March 9, 1984

UNITED STATES CONSTITUTION

AMENDMENT XI

RESTRICTION OF JUDICIAL POWER

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

§57-15-140. Department shall operate ferry
across intracoastal waterway.

The State Highway Department shall take over, maintain and operate the ferry across the intracoastal waterway which traverses State Highway No. 716 which extends from a point on U.S. Highway No. 1, south of Georgetown, in a southeasterly direction, to Winyah Bay, such ferry and its approaches to form a part of State Highway No. 716 in Georgetown County. The provisions of Article 13 of Chapter 5 of this Title shall not apply to the operation, repair or maintenance of any such ferry.

Contributions from private citizens or public or private agencies may be made with respect to defraying the operational or maintenance expenses of such ferry; provided, however, that any such contribution shall in no wise render

legally liable or responsible any of the
contributors.

Act No. 29 of the Acts and Joint Resolutions of the State of South Carolina, 1947, 45 S. at L. 44.

No. 29

AN ACT To Authorize and Direct The South Carolina State Highway Department To Take Over, Maintain And Operate The Ferry Across The Intra-Coastal Waterway On Route No. 716, Which Route Extends From U.S. Highway No. 17, South of Georgetown, South Carolina, In A Southeasterly Direction, To Winyah Bay.

BE IT ENACTED by the General Assembly of the State of South Carolina:

SECTION 1: Ferry across intra-coastal waterway which traverses state highway No. 716 part of said highway-maintenance and operation.-That the South Carolina State Highway Department is authorized and directed to take over, maintain and operate the ferry across the intra-coastal waterway which traverses State Highway No. 716 which extends from a point on U.S. Highway No. 17, South of Georgetown, South Carolina, in

a Southeasterly direction, to Winyah Bay, the said Ferry and its approaches to form a part of the said State Highway No. 716 in said County.

SECTION 2: Repeal.-All Acts or parts of Acts inconsistent herewith are hereby repealed.

SECTION 3: Time Effective.-This Act shall take effect immediately upon its approval by the Governor.

Approved the 11 day of March, 1947.

Act No. 896 of the Acts and Joint Resolutions of the State of South Carolina, 1934, 38 S. at L. 1539.

No. 896

AN ACT Authorizing the State Highway Department to Cooperate With Berkeley and Georgetown Counties in the Establishment and Operation of a Ferry Across the Santee River on State Highway No. 511 Between Andrews and Jamestown and Limiting Liability on Account of the Operation of Said Ferry.

SECTION 1: State Highway Department Cooperate with Berkeley and Georgetown Counties in Establishing and Operating Ferry across Santee River.--Be it enacted by the General Assembly of the State of South Carolina: The State Highway Department is hereby authorized to cooperate with the Counties of Berkeley and Georgetown in the establishment and operation of a Ferry, with necessary road approaches thereto, across the Santee River

on State Highway No. 511 between Andrews and Jamestown.

SECTION 2: Liability of Department.--The State Highway Department is hereby specifically relieved of any and all liability on account of personal injury or death, or property damages, growing out of the establishment and operation of the ferry and road approaches thereto referred to in Section 1. hereof. All statutes or parts of statutes authorizing suits against the said Department on account of personal injury or death, or property damages, growing out of accidents on State Highways are hereby specifically limited in their operation so as not to apply to the said ferry and road approaches thereto.

SECTION 3. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency.

SECTION 4. This Act shall take effect immediately upon its approval by the Governor.

Approved the 12th day of April, 1934.

§1. Regulations by Secretary of the Army
for navigation of waters generally

It shall be the duty of the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as in his judgment the public necessity may require for the protection of life and property, or of operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other executive department. Such regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall violate such regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court of the United States within whose territorial jurisdiction such offense may have been committed, shall be

punished by a fine not exceeding \$500, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.

Any regulations prescribed by the Secretary of the Army in pursuance of this section may be enforced as provided in section 413 of this title, the provisions whereof are made applicable to the said regulations.

§401. Construction of bridges, causeways, dams or dikes generally; exemptions

It shall not be lawful to construct or commence the construction of any bridge, causeway, dam, or dike over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for (1) the bridge or causeway shall have been submitted to and approved by the secretary of Transportation, or (2) the dam or dike shall have been submitted to and approved by the Chief of Engineers and Secretary of the Army. However, such structures may be built under authority of the legislature of a State across rivers and other waterways the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof

thereof are submitted to and approved by the Secretary of Transportation or by the Chief of Engineers and Secretary of the Army before construction is commenced. When plans for any bridge or other structure have been approved by the Secretary of Transportation or by the Chief of Engineers and Secretary of the Army, it shall not be lawful to deviate from such plans either before or after completion of the structure unless modification of said plans has previously been submitted to and received the approval of the Secretary of Transportation or the Chief of Engineers and the Secretary of the Army. The approval required by this section of the location and plans or any modification of plans of any bridge or causeway does not apply to any bridge or causeway over waters that are not subject to the ebb and flow of the tide and that are not used and are not susceptible to use in their natural condi-

tion or by reasonable improvement as a means to transport interstate or foreign commerce.

§403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in

The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven,

harbor, canal, lake, harbor of refuge, or
inclosure within the limits of any
breakwater, or of the channel of any
navigable water of the United States,
unless the work has been recommended by the
Chief of Engineers and authorized by the
Secretary of the Army prior to beginning
the same.

§404. Establishment of harbor lines;
conditions to grants for extension
of piers, etc.

Where it is made manifest to the Secretary of the army that the establishment of harbor lines is essential to the preservation and protection of harbors he may, and is, authorized to cause such lines to be established, beyond which no piers, wharves, bulkheads, or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him: Provided, That whenever the Secretary of the Army grants to any person or persons permission to extend piers, wharves, bulkheads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor lines established under authority of the United States, he shall cause to be ascertained

the amount of tidewater displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tidewater channels between high and low water mark, to such an extent as to create a basin for as much tidewater as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him.

\$406. Penalty for wrongful construction of
bridges, piers, etc.; removal of
structures

Every person and every corporation that shall violate any of the provisions of sections 401, 403, and 404 of this title or any rule or regulation made by the Secretary of the Army in pursuance of the provisions of section 404 of this title shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court. And further, the removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any

district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General of the United States.

§409. Obstruction of navigable waters by
vessels; floating timber; marking
and removal of sunken vessels

It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as "sack rafts of timber and logs" in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel, accidentally or otherwise, it shall be the duty of the owner of such sunken craft to immediately mark it with a buoy or beacon during the

day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner so to do shall be unlawful; and it shall be the duty of the owner of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as provided for in sections 411 to 416, 418, and 502 of this title.

§411. Penalty for wrongful deposit of
refuse; use of or injury to harbor
improvements, and obstruction of
navigable waters generally

Every person and every corporation that shall violate, or that shall knowingly aid, abet, authorize, or instigate a violation of the provisions of sections 407, 408, and 409 of this title shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$2,500 nor less than \$500, or by imprisonment (in the case of a natural person) for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction.

§413. Duty of United States attorneys and other Federal officers in enforcement of provisions; arrest of offenders

The Department of Justice shall conduct the legal proceedings necessary to enforce the provisions of sections 401, 403, 404, 406, 407, 408, 409, 411, 549, 686, and 687 of this title; and it shall be the duty of United States attorneys to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of the Army or by any of the officials hereinafter designated, and it shall furthermore be the duty of said United States attorneys to report to the Attorney General of the United States the action taken by him against offenders so reported, and a transcript of such reports shall be transmitted to the Secretary of the Army by the Attorney General; and for

the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of the Army, and the United States collectors of customs and other revenue officers shall have power and authority to swear out process, and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the said sections, or who may violate any of the provisions of the same: Provided, That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: And provided further, That whenever any arrest is made under such sections, the person so arrested

shall be brought forthwith before a
commissioner, judge, or court of the United
States for examination of the offenses
alleged against him; and such commissioner,
judge, or court shall proceed in respect
thereto as authorized by law in case of
crimes against the United States.

§414. Removal by Secretary of the Army of
sunken water craft generally

Whenever the navigation of any river, lake, harbor, sound, bay, canal, or other navigable waters of the United States shall be obstructed or endangered by any sunken vessel, boat, water craft, raft, or other similar obstruction, and such obstruction has existed for a longer period than thirty days, or whenever the abandonment of such obstruction can be legally established in a less space of time, the sunken vessel, boat, water craft, raft, or other obstruction shall be subject to be broken up, removed, sold, or otherwise disposed of by the Secretary of the Army at his discretion, without liability for any damage to the owners of the same:

Provided, That in his discretion, the Secretary of the Army may cause reasonable notice of such obstruction of not less than

thirty days, unless the legal abandonment
of the obstruction can be established in a
less time, to be given by publication,
addressed "To whom it may concern," in a
newspaper published nearest to the locality
of the obstruction, requiring the removal
thereof: And provided also, That the
Secretary of the Army may, in his
discretion, at or after the time of giving
such notice, cause sealed proposals to be
solicited by public advertisement, giving
reasonable notice of not less than ten
days, for the removal of such obstruction
as soon as possible after the expiration of
the above specified thirty days' notice, in
case it has not in the meantime been so
removed, these proposals and contracts, at
his discretion, to be conditioned that such
vessel, boat, water craft, raft, or other
obstruction, and all cargo and property
contained therein, shall become the
property of the contractor, and the con-

tract shall be awarded to the bidder making the proposition most advantageous to the United States: Provided, That such bidder shall give satisfactory security to execute the work: Provided further, That any money received from the sale of any such wreck, or from any contractor for the removal of wrecks, under this paragraph shall be covered into the Treasury of the United States.

§415. Summary removal of water craft
obstructing navigation

Under emergency, in the case of any vessel, boat, water craft, or raft, or other similar obstruction, sinking or grounding, or being unnecessarily delayed in any Government canal or lock, or in any navigable waters mentioned in Section 414 of this title, in such manner as to stop, seriously interfere with, or specially endanger navigation, in the opinion of the Secretary of the Army, or any agent of the United States to whom the Secretary may delegate proper authority, the Secretary of the Army or any such agent shall have the right to take immediate possession of such boat, vessel, or other water craft, or raft, so far as to remove or to destroy it and to clear immediately the canal, lock, or navigable waters aforesaid of the obstruction thereby caused, using his best

judgment to prevent any unnecessary injury; and no one shall interfere with or prevent such removal or destruction: Provided, That the officer or agent charged with the removal or destruction of an obstruction under this section may in his discretion give notice in writing to the owners of any such obstruction requiring them to remove it: And provided further, That the expense of removing any such obstruction as aforesaid shall be a charge against such craft and cargo; and if the owners thereof fail or refuse to reimburse the United States for such expense within thirty days after notification, then the officer or agent aforesaid may sell the craft or cargo, or any part thereof that may not have been destroyed in removal, and the proceeds of such sale shall be covered into the Treasury of the United States.

damages should be the fair value of the property, less any salvage value. Whether or not there has been any enhanced value (i.e., whether the fair value of the structure immediately after the repairs is greater than its fair value immediately before the damage occurred) is a matter to be determined from an actual survey of the structure and knowledge of its age and condition. Where maintenance has equalled depreciation there probably would be no enhanced value.

(4) If the parties deny their responsibility, or if they refuse or neglect to remove any unlawful structure or deposit or to repair the damages within the time specified by the District Engineer, the matter will be reported to the Chief of Engineers with such evidence as the District Engineer may be able to obtain and his recommended action under Section 17 of the Act of March 3, 1899. In a situation

both, in the discretion of the court. The removal of any structures or parts of structures erected in violation of the provisions of the said sections may be enforced by the injunction of any district court exercising jurisdiction in any district in which such structures may exist, and proper proceedings to this end may be instituted under the direction of the Attorney General.

(3) It is the duty of each District Engineer to take notice of any violations of the laws for the protection of the navigable waters and the works of improvement therein that may occur in his district and to take the necessary steps to secure enforcement of the law. Whenever any violation of any of these provisions of law comes to his attention he will investigate carefully the circumstances of the case and will determine the amount of the damage for which the parties committing

the violation are responsible under Section 16 of the River and Harbor Act of March 3, 1899. He will advise the responsible parties to remove the illegal structure or deposit or to repair the damage at their own expense within a time specified by him. When there is reasonable doubt as to legal liability or the facts do not appear to warrant legal action, the District Engineer will report the case to the Chief of Engineers for decision before communicating with the responsible parties. When the damage must be repaired within a reasonable time, if the responsible parties so request in writing and if, when considered advisable by the District Engineer to protect the interests of the United States, they furnish a satisfactory bond or other guaranty, he may cause the repairs to be made by employees of the United States and then call upon the responsible parties to pay over to him the cost of the damages

when finally ascertained. Where the damages is not to be repaired within a reasonable time, the District Engineer will make final settlement with the responsible parties as promptly as possible by collecting the estimated amount of the damages. All sums so received will be deposited promptly to the credit of the Treasurer of the United States for recredit to the appropriation affected and will be accounted for in the District Engineer's money accounts by proper vouchers. With reference to the method of ascertaining the amount of the damages under Section 16 of the Act, a distinction should be made between cases involving property that should be repaired and those involving property that should be abandoned. In the former cases the amount of the damages should be the total cost of repairs, less any salvage value and any enhanced value. In the latter cases, the amount of the

portation pursuant to section 6(g)(6)(C) of the Department of Transportation Act (80 Stat. 931).

(2) Section 10 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 403), prohibits the creation of any obstruction not affirmatively authorized by Congress to the navigable capacity of any of the waters of the United States, and makes it unlawful to build any wharf, pier, dolphin, boom weir, breakwater, bulkhead, jetty, or other structures, outside established harbor lines or where no harbor lines have been established, or to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The authority of the Secretary of the Army to prevent

obstructions to navigation was extended to artificial islands and structures on the Outer Continental Shelf (section 4(f) of the Outer Continental Shelf Lands Act approved Aug. 7, 1953 (67 Stat. 463; 43 U.S.C. 1333(f)).

(b) Wrecks and similar obstructions.

Section 15 of the River and Harbor Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 408), makes it unlawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft, or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other craft in navigable channels, or to float loose timber and logs or sack rafts of timber and logs in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation (an Act of Congress approved May 9, 1900, 31 Stat.

172; 33 U.S.C 410, authorized the Secretary of the Army to prescribe regulations to govern the floating of loose timber and logs and sack rafts and other methods of navigation on any navigable river or waterway of the United States or any part thereof whereon the floating of loose timber and logs and sack rafts is the principal method of navigation). Whenever a vessel, raft, or other craft is wrecked and sunk in a navigable channel accidentally or otherwise, it is the duty of the owner to immediately mark it with a buoy or beacon during the day and a lighted lantern at night, and to maintain such marks until the sunken craft is removed or abandoned. By the maritime law the owner of a vessel which is sunk without fault on his part may abandon the wreck, in which case he cannot be held responsible for removing it. That law has not been changed by the River and Harbor Act approved

March 3, 1899, which fully recognizes the owner's right of abandonment. However, a person who willfully or negligently permits a vessel to sink in navigable waters of the United States may not relieve himself from all liability by merely abandoning the wreck. He may be found guilty of a misdemeanor and punished by fine, imprisonment, or both, and in addition may have his license revoked or suspended. He may also be compelled to remove the wreck as a public nuisance or to pay for its removal.

(f) Penalties for violations. (1)

Section 12 of the River and Harbor Act of March 3, 1899 (30 Stat. 1151; 33 U.S.C. 406), as amended, provides that every person and every corporation that shall violate any of the provisions of Sections 9 and 10 shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine, imprisonment, or

The Jones Act

46 U.S.C. 688

§688. Recovery for injury to or death of
seaman

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of

the district in which the defendant employer resides or in which is principal office is located.

The Suits in Admiralty Act (S.I.A.A.)

46 U.S.C. 742

§742. Libel in personam

In cases where if such vessel were privately owned or operated, or if such cargo were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by

registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United states or such corporation shall file a libel in rem or in personam in any district, a cross libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court of the United States.

The Death of the High Seas Act (D.O.H.S.A.)

46 U.S.C. 761

§761. Right of action; where and by whom brought.

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

§209.170 Violations of laws protecting
navigable waters.

(a) Illegal structures or other
work.

(1) Section 9 of the River and Harbor
Act of March 3, 1899 (30 Stat. 1151:33
U.S.C. 401), makes it unlawful to construct
any bridge, dam, dike, or causeway over or
in any navigable water of the United States
until the proper local authority has been
obtained and until the location and plans
have been approved by the Chief of
Engineers and the Secretary of the Army.
When plans for any structure have been so
approved, it is unlawful to deviate from
such plans unless the modification thereof
has received the approval of the Chief of
Engineers and the Secretary of the Army.
Plans of any bridge or causeway now require
the approval of the Department of Transpor-

The foregoing order is hereby amended by substituting the word "district engineer" for "officer", with the understanding that the term "district engineer" includes both officers and civilians assigned by competent orders to the charge of a district of the Engineer Department at Large.

(3) The above quoted authority eliminates the necessity for establishing abandonment in emergency cases, but information required by paragraph (k)(2) will be furnished HWDA (DAEN-CWO-M) Washington, D.C. 20314.

(4) Action under this section may be undertaken without prior approval of the Chief of Engineers, subject to the same provisos contained in paragraph (h) of this section.

§209.200 Regulations governing navigable waters.

(a) Publication of regulations. (1)

Regulations prescribed by or under the direction of the Secretary of the Army to govern navigation and navigable waters, including general, danger zone, restricted area, dumping grounds, fishing and hunting, and navigation regulations, are contained in the Code of Federal Regulations, Title 33, Navigation and Navigable Waters, Chapter II.

(b) Navigation regulations. (1)

Section 7 of the River and Harbor Act approved August 8, 1917 (40 Stat. 266; 33 U.S.C. 1) authorizes the Secretary of the Army to prescribe such regulations for the use, administration, and navigation of the navigable waters of the United States as public necessity may require for the protection of life and property, or for operations of the United States in channel improvement, covering all matters not specifically delegated by law to some other

duties which will be of benefit to the Coast Guard in maintaining its system of aids to navigation. This should include statements...

PART 320 - GENERAL REGULATORY POLICIES

§320.1 Purpose and scope.

(a) Regulatory approach of the Corps of Engineers. (1) The U. S. Army Corps of Engineers has been involved in regulating certain activities in the nation's waters since 1890. Until 1968, the primary thrust of the Corps' regulatory program was the protection of navigation. As a result of several new laws and judicial decisions, the program evolved from one that protects navigation only to one that considers the full public interest by balancing the favorable impacts against the detrimental impacts. This is known as the "public interest balancing process" or the "public interest review." The program is one which reflects the national concerns for both the

requiring immediate action, the District Engineer may report the case directly to the U.S. attorney for the district. The Chief of Engineers will be advised of such action by a written report. Although the Corps of Engineers has certain police powers under this Act it has been the long standing policy to secure compliance with its provisions short of legal proceedings. Accordingly every effort will be made to accomplish corrective measures prior to initiation of action leading to such proceedings. As a general rule, while minor and unintentional or accidental violations of the provisions of the Act need not be reported to the Chief of Engineers, all willful or intentional violations and all cases in which the parties responsible refuse or neglect to remove the unlawful structure or deposit or to make good the damages suffered should be reported promptly to the Chief of Engineers

regulations of the Coast Guard marking of wrecks, see 33 CFR Part 64.

(h) Removal of obstruction under the provisions of Section 19 of the River and Harbor Act of 1899. (33 U.S.C. 414) Action under this section may be undertaken without prior approval of the Chief of Engineers only when the navigation of navigable waters of the United States is obstructed or endangered, and if the obstruction has been in existence over 30 days, or its abandonment by the owner can be legally established in a shorter period. The obstruction can be removed by any method deemed most advantageous provided:

(2) The wreck is a sunken vessel, boat, watercraft, raft or other similar obstruction.

(3) The wreck is an obstruction to general navigation, not merely an obstruction to a private wharf or canal or merely aesthetically displeasing.

(4) All reasonable efforts have first been exhausted to require the owner to remove the wreck himself within a reasonable period. If this effort is not successful, then removal may be undertaken at Federal expense. The District Engineer should institute steps to recover from the owners the costs incurred. (Wyandotte Transportation v. United States, 389 U.S. 205 88 S.Ct. 379 [1967]. Further, the owner must be advised that the wreck will be removed by the United States with the reservation of all rights of the United States to recover from the owner all expenses of removal.

(1) Removal of obstructions under provisions of Section 20 of the River and Harbor Act of 1899 (33 U.S.C. 415).

(1) This section provides that action thereunder may be taken by any Agent of the United States to whom the Secretary of the Army "may delegate proper authority." A

delegation of such authority was made by the following order issued by the Secretary of War 20 January 1905.

Whenever any vessel, boat, watercraft, or raft sinks, grounds, or is unnecessarily delayed in any canal, lock, or other improvement controlled or owned by the United States, or in any navigable waters of the United States, under circumstances of emergency, the officer in charge of such lock, canal, improvement or district will take charge of such vessel, boat, watercraft, raft, or other obstruction with a view to its immediate removal or destruction, using his best judgment in all cases to prevent any unnecessary injury. Any action taken under the above instructions will be reported forthwith to the Chief of Engineers for the information or action of the Secretary of War.

(2) The above order was amended on 2 November 1917 as follows:

executive department. The statute provides for the posting of regulations and punishment for violations.

(2) Section 6 of the River and Harbor Act approved June 13, 1902 (32 Stat. 374; 33 U.S.C. 499) provides that regulations prescribed by the Secretary of the Army may be enforced as provided in section 17 of the River and Harbor Act approved March 3, 1899 (30 Stat. 1153; 33 U.S.C. 413).

(3) District Engineers will take action with respect to regulations prescribed for waterways under their jurisdiction:

(ii) To insure that the regulations are properly and fairly administered.

(iii) To recommend any revisions necessary to permit full use of the waterway by the public.

§209.325 Navigation lights, aids to navigation, navigation charts, and related data policy, practices and procedure.

(a) Purpose. This regulation prescribes the policy, practice and procedure to be used by all Corps of Engineers installations and activities in connection with aids to navigation, chart data, and publication of information on Civil Works activities.

(d) Cooperation with Coast Guard.

(1) District Engineers will consult with the Coast Guard District Commander during design of channel and harbor improvement projects to discuss the aids to navigation requirements and all other facets of the projects that involve Coast Guard responsibility. Project material furnished direct to Coast Guard Commanders will include:

(3) District Engineers will furnish direct to the various Coast Guard District Commanders, for their immediate information, any facts which may come to their attention in connection with their

in accordance with the above. It is the policy not to recommend prosecution when the violation of law is trivial, apparently unpremeditated, and results in no material public injury. Each report recommending prosecution should be accompanied by a full statement of the case and copies of correspondence relating thereto.

§209.190 Removal of wrecks and other obstructions.

(a) Laws relative to removal of wrecks and obstructions. (1) The laws relating to removal of wrecks and contained in Sections 15, 19 and 20 of the River and Harbor Act approved 3 March 1899 and Section 86 of Title 14, United States Code.

(2) As removal by the United States without formal abandonment involves the taking of private property for public purposes, the provisions of the section of law applicable to the particular case must

be followed strictly. Removal by the United States is not usually undertaken if the obstruction simply affects the approaches to private wharves or canals and is not obstructing or endangering navigation.

(b) Reports on accidents or obstructions affecting navigation. An accident such as a vessel collision, sinking or grounding, or a bridge failure which occurs in navigable waters of the United States and poses a threat to navigation, shall be reported by the District Engineer to HQDA (DAEN-CWO-M), Washington, D.C. 20314 by teletype within 24 hours. Included in the teletype should be a report on the extent of the danger to navigation and an estimate of the duration of the obstruction. When such an accident results in an obstruction to navigation, it shall be immediately reported by telephone to HQDA, Chief, Operations Branch,

DAEN-CWO-M. (Exempt under paragraph 7-20,
AR 335-15.)

(c) General procedure concerning
wrecks and other obstructions. (1) The
District Engineer should ascertain, at
once, whether navigation is obstructed or
endangered, and if the obstruction must be
removed, he should inform the owner
promptly of the provisions of the law.

(2) Vessel owners, masters and others
having any knowledge of wrecks or other
obstructions should be encouraged to report
their location promptly to the District
Engineer.

(3) If the owner commences removal,
the District Engineer should supervise the
operations sufficiently to insure against
unreasonable interference with navigation
and see that the removal proceeds
diligently. If removal by the United
States is necessary, the District Engineer
must act promptly. If the owner has not

marked the obstruction, the District Engineer should request the local Coast Guard District Commander to do so.

(e) Abandonment of wrecks by owners or underwriters. (1) Every precaution should be taken in cases involving wrecked or sunken vessels to insure that the rights of the United States are not prejudiced by acceptance of abandonment when tendered by owners or underwriters of vessels under 33 U.S.C. 409. Under no circumstances will acceptance of abandonment be indicated. If a letter of abandonment is received, receipt of the letter should be merely acknowledged and a statement include in the reply as follows: "This acknowledgement should in no way be construed as acceptance by the United States of an abandonment of such vessel, nor as waiver of any right to enforce liability for any damage caused by its sinking or cost of removal." When a notice of abandonment has not been received

from the owners or underwriters, or ownership cannot be established, the District Engineer may, after the obstruction has existed for over thirty days, establish abandonment by inserting, in a newspaper nearest the locality of the obstruction, a legal advertisement addressed "To Whom It May Concern" requiring the removal of the obstruction (33 U.S.C. 414).

(f) Making of wrecks by Coast Guard.

(1) Under 14 U.S.C. 86 of the cost of continuing the marking of sunken vessel or other obstruction to navigation, after abandonment is established, shall be borne by the Department of Transportation.

(2) The District Engineer will advise the Coast Guard as soon as practicable if he desires an obstruction marked and will also notify the Coast Guard when removal operations have been completed. For

(c) The term "work" shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

(d) The term "letter of permission" means a type of individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.2(e).

(e) The term "individual permit" means a department of the Army authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of this regulation and 33 CFR 325 and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR 320.

(f) The term "general permit" means a Department of the Army authorization that is issued on a nationwide ("nationwide permits") or regional ("regional permits")

protection and utilization of important resources. It is a dynamic program that varies the weight given to a specific public interest factor in light of the importance of other such factors in a particular situation.

(2) The Corps is a highly decentralized organization. Most of the authority for administering the regulatory program has been given to the thirty six district engineers. If a district or division engineer makes a final decision on a permit application in accordance with the procedures and authorities contained in these regulations (33 CFR Parts 320-330), there is no administrative appeal of that decision.

(5) The Corps believes that state and Federal regulatory programs should complement rather than duplicate one another. Use of general permits, joint processing procedures, interagency review

proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) The relative extent of the public and private need for the proposed structure or work:

(ii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work may

have on the public and private uses to which the area is suited.

**PART 322 - PERMITS FOR STRUCTURES OR WORK
IN OR AFFECTING NAVIGABLE WATERS OF
THE UNITED STATES**

§322.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR Part 320 and procedures of 33 CFR Part 325 those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize certain structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10). See 33 CFR 320.2(b). Certain structures or work in or affecting navigable waters of the United States are also regulated under other authorities of the Department of the

Army. These include discharges of dredged or fill material into waters of the United States, including the territorial seas, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344; see CFR Part 323) and the transportation of dredged material by vessel for purposes of dumping in ocean waters, including the territorial seas, pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413; see 33 CFR Part 324). A Department of Army permit will also be required under these additional authorities if they are applicable to structures or work in or affecting navigable waters of the United States. Applicants for Department of the Army permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their

proposed activities.

§322.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "structure" shall include, without limitation, any pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.

basis for a category or categories of activities when:

(1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or

(2) the general permit would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, state, or local agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 DFR Part 330).

§322.3 Activities requiring permits.

(a) General. Department of the Army permits are required under Section 10 for structures and/or work in or affecting navigable waters of the United States except as otherwise provided in these regulations. Activities that were commenced or completed shoreward of

coordination and authority transfers (where authorized by law) are encouraged to reduce duplications.

(b) Types of activities regulated.

This regulation and the regulations that follow (33 CFR Parts 321-330) prescribe the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army permits for various types of activities that occur in waters of the United States or the oceans. This part identifies the various Federal statutes that require Department of the Army permits before these activities can be lawfully undertaken; the related Federal laws applicable to the review of each activity that requires a Department of the Army permit; and the general policies that are applicable to the review of all activities that require Department of the Army permits. Parts 321-324 address the various

types of activities that require Department of the Army permits, including special policies and procedures applicable to those activities, as follows:

(2) Other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (Part 322);

(3) Activities that alter or modify the course, condition, location, or capacity of a navigable water of the United States (Part 322);

(7) Nationwide general permits for certain categories of these activities (Part 330).

(c) Forms of authorization.

Department of the Army permits for the above described activities are issued under various forms of authorization. These include individual permits that are issued following a review of an individual application for a Department of the Army

permit and general permits that authorize the performance of a category or categories of activities in a specific geographical region or nationwide. The term "general permit" as used in these regulations (33 CFR Parts 320-330) refers to both those regional permits issued by district or division engineers on a regional basis and to nationwide permits issued by the Chief of Engineers through publication in the Federal Register and applicable throughout the nation. The nationwide permits are found in 33 CFR Part 330. If an activity is covered by a general permit, an application for a Department of the Army permit does not have to be made. In such cases, a person must only comply^h with the conditions contained in the general permit to satisfy requirements of law for a Department of the Army Permit.

§320.2 Authorities to issue permits.

(a) Section 9 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 401) (hereinafter referred to as Section 9) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single state, the structure may be built under authority of the legislature of that State, if the location and plans or any modification thereof are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit. Section 9 also pertains to bridges and causeways by the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of

Transportation under the Department of Transportation Act of October 15, 1966 (49 U.S.C. 1155g(6)(A)). (See also 33 CFR Part 321.) A Department of the Army permit pursuant to Section 404 of the Clean Water Act is required for the discharge of dredged or fill material into waters of the United States associated with bridges and causeways. (See 33 CFR Part 323.)

(b) Section 10 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters is unlawful unless the work has been

recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit. The authority of the Secretary of the Army to prevent obstructions to navigation in the navigable waters of the United States was extended to artificial islands, installations, and other devices located on the outer continental shelf by Section 4(e) of the Outer Continental Shelf Lands Act of 1953 as amended (43 U.S.C. 1333(e)). (See also 33 CFR Part 322.)

§320.4 General policies for evaluating permit applications.

The following policies shall be applicable to the review of all applications for Department of the Army permits. Additional policies specifically applicable to certain types of activities are identified in Parts 321-324.

(a) Public interest review. (1) The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process. That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the

established Federal harbor lines before May 27, 1970 (see 33 CFR 320.4(o)) also do not require Section 10 permits; however, if those activities involve the discharge of dredged or fill material into waters of the United States after October 18, 1972, a Section 404 permit is required (see 33 CFR Part 323).

(1) Structures or work are in the navigable waters of the United States if they are within limits defined in 33 CFR Part 329. Structures or work outside these limits are subject to the provisions of law cited in paragraph (a) of this section, if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact on the navigable capacity of the waterbody. For purposes of a Section 10 permit, a tunnel or other structure of work under or over a navigable water of the United States is considered to

have an impact on the navigable capacity of the waterbody.

(2) Congress has delegated to the Secretary of the Army and the Chief of Engineers in Section 10 the duty to authorize or prohibit certain work or structures in navigable waters of the United States. The general legislation by which federal agencies are empowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of Section 10. If an agency asserts that it has Congressional authorization meeting the test of Section 10 or would otherwise be exempt from the provisions of Section 10, the legislative history and/or provisions⁶ of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt

neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action or other forces which can be expected. District engineers will inform applicants of the hazards involved and encourage safety in location, design and operation. Corps of Engineers officials will also encourage cooperative or group use facilities in lieu of individual proprietor use facilities.

(e) Aids to navigation. The placing of fixed and floating aids to navigation in a navigable water of the United States is within the purview of Section 10 of the River and Harbor Act of 1899. Furthermore, these aids are of particular interest to the U.S. Coast Guard because of their control of marking, lighting and

standardization of such navigation aids. A Section 10 nationwide permit has been issued for such aids provided they are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR Part 330). Electrical service cables to such aids are not included in the nationwide permit (an individual or regional Section 10 permit will be required).

(g) Canals and other artificial waterways connected to navigable waters of the United States. (1) A canal or similar artificial waterway is subject to the regulatory authorities discussed in §322.3, of this part, if it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, location, condition, or capacity or if at some point in its construction or operation it results in an effect on the

course, location, condition, or capacity of navigable waters of the United States. In all cases the connection to navigable waters of the United States requires a permit. Where the canal itself constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of these regulations. For all other canals, the exercise of regulatory authority is restricted to those activities which affect the course, location, condition, or capacity of the navigable waters of the United States.

(1) Power Transmission Lines

(3) Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater

clearances will be required if the public interest so indicates.

§325.7 Modification, suspension or revocation of authorizations.

(a) General. The district engineer may reevaluate the circumstances and conditions of any permit, including regional permits either on his own motion, at the request of the permittee, or a third party, or as the result of periodic progress inspections, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest. In the case of regional permits, this reevaluation may cover individual activities, categories of activities, or geographic areas. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the authorized activity have changed since the

permit was issued or extended, and the continuing adequacy of the permit conditions; any significant objections to the authorized activity which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extend to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with §325.2 of this part, and not as modifications under this paragraph.

(b) Modification. Upon request by the permittee or, as a result of reevaluation of the circumstances and conditions of a permit, the district engineer may determine that the public interest requires a modification of the

terms or conditions of the permit. In such cases, the district engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the district engineer will give the permittee written notice of the modification, which will then become effective on such date as the district engineer may establish. In the event a mutual agreement cannot be reached by the district engineer and the permittee, the district engineer will proceed in accordance with paragraph (c) of this section if immediate suspension is warranted. In cases where immediate suspension is not warranted by the district engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons

therefor, and that he may request a meeting with the district engineer and/or a public hearing. The modification will become effective on the date set by the district engineer which shall be at least ten days after receipt of the notice by the permittee unless hearing or meeting is requested within that period. If the permittee fails or refuses to comply with the modification, the district engineer will proceed in accordance with 33 CFR Part 326.

(c) Suspension. The district engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the public interest. The district engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop those

activities previously authorized by the suspended permit. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may within 10 days of receipt of notice of the suspension, request a meeting with the district engineer and/or a public hearing to present information in this matter. If a hearing is requested, the procedures prescribed in 33 CFR Part 327 will be followed. After the completion of the meeting or hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing or meeting is requested), the district engineer will take action to reinstate, modify or revoke the permit.

(d) Revocation. Following completion of the suspension procedures in paragraph (c) of this section if revocation of the

permit is found to be in the public interest, the authority who made the decision on the original permit may revoke it. The permittee will be advised in writing of the final decision.

(e) Regional permits. The district engineer may, by following the procedures of this section, revoke regional permits for individual activities, categories of activities or geographic areas, the informal discussions provided in paragraph (b) of this section may be waived and any written notification may be made through the general public notice procedures of this regulation. If a regional permit is revoked, any permittee may then apply for an individual permit which shall be processed in accordance with these regulations.

§325.8 Authority to issue or deny permits.

that agency from the requirements of Section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(3) The policy provisions set out in 33 CFR 320.4(j) relating to state or local certifications and/or authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy, e.g., Section 313 and Section 401 of the Clean Water Act.

§322.5 Special policies.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 10 permits. The following additional special policies and procedures shall also be

applicable to the evaluation of permit applications under this regulation.

(a) General. Department of the Army permits are required for structures or work in or affecting navigable waters of the United States. However, certain structures or work specified in 33 CFR Part 330 are permitted by that regulation, an individual or regional Section 10 permit will be required.

(d) Structures for small boats. (1) As a matter of policy, in the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of the waterway and the

(a) General. Except as otherwise provided in this regulation, the Secretary of the Army, subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized representatives to issue or deny permits for construction or other work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899. He also has authorized the Chief of Engineers and his authorized representatives to issue or deny permits for the discharge of dredged or fill material in waters of the United States pursuant to section 404 of the Clean Water Act or for the transportation of dredged material for the purpose of disposing of it into ocean waters pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny

permits pursuant to Section 9 of the River and Harbor Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) District Engineers' authority.

District engineers are authorized to issue or deny permits in accordance with these regulations permits pursuant to Section 10 of the River and Harbor Act of 1899; Section 404 of the Clean Water Act; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases not required to be referred to higher authority (see below). It is essential to the legality of a permit that it contain the name of the district engineer as the issuing officer. However, the permit need not be signed by the district engineer in person but may be signed for and in behalf of him by whomever he designates. In cases where permits are denied for reasons other than navigation or

failure to obtain required local, State, or other Federal approvals or certifications, the Statement of Findings must conclusively justify a denial decision, District engineers are authorized to deny permits without issuing a public notice or taking other procedural steps where required local, state or other Federal permits for the proposed activity have been denied or where he determines that the activity will clearly interfere with navigation except in all cases required to be referred to higher authority (see below). District engineers are also authorized to add, modify, or delete special conditions in permits in accordance with §325.4 of this part, except for those conditions which may have been imposed by higher authority, and to modify, suspend and revoke permits according to the procedures of §325.7 of this part.

District engineers will refer the following applications to the division engineer for

resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When higher authority requests the application be forwarded for decision; or

(5) When the district engineer is precluded by law or procedures required by law from taking final action on the application (e.g., Section 404(c) of the Clean Water Act, Section 9 of the River and Harbor Act of 1899, or territorial sea baseline changes).

(c) Division Engineers' authority. Division engineers will review and evaluate all permit applications referred by

district engineers. Division engineers may authorize the issuance or denial of permits pursuant to Section 10 of the River and Harbor Act of 1899; Section 404 of the Clean Water Act; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions in accordance with §325.4 of this Part in all cases not required to be referred to the Chief of Engineers. Division Engineers will refer the following applications to the Chief of Engineers for resolution:

- (1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;
- (2) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(3) When higher authority requests the application be forwarded for decision; or

(4) When the division engineer is precluded by law or procedures required by law from taking final action on the application.

PART 326 - ENFORCEMENT, SUPERVISION AND INSPECTION

§326.1 Purpose.

This regulation prescribes the policy, practice, and procedures to be followed by the Corps of Engineers in connection with activities requiring Department of the Army permits that are performed without prior authorization; and supervision and inspection of authorized activities.

§326.2 Discovery of unauthorized activity.

(a) When the district engineer becomes aware of any unauthorized activity still in progress, including a violation of the terms and conditions of an authorized

activity, he shall immediately issue an order prohibiting further work to all persons responsible for and/or involved in the performance of the activity and may order interim protective work. If the unauthorized activity has been completed, he will advise the responsible party of his discovery.

§326.3 Administrative action.

(a) Initial investigation.

Immediately upon discovery of an unauthorized activity, the district engineer shall commence an investigation to ascertain the facts surrounding the activity. In making this investigation, the district engineer should, in appropriate cases, depending upon the potential impacts of the completed work solicit the views of the Regional Administrator of the Environmental Protection Agency, the Regional Director of the U.S. Fish and Wildlife Service, and the

Regional Director of the National Marine Fisheries Service, and other Federal, state, and/or local agencies. He shall also request the persons involved in the unauthorized activity to provide appropriate information on the activity to assist him in his evaluation and in determining the course of action to be taken.

(b) Remedial work. (1) The district engineer shall determine whether as a result of the unauthorized activity, life, property or important public resources are in serious jeopardy and would require expeditious measures for protection. Such measures may range from minor modification of the existing work to complete restoration of the area involved. Important public resources are identified in 33 CFR 320.4. If the district engineer determines that immediate remedial work is required, he shall issue an appropriate

order describing the work, conditions and time limits required to provide satisfactory protection of the resource.

(2) Voluntary restoration by the responsible party on the party's own initiative shall be allowed if legal action is not otherwise necessary. However, district engineers will advise the responsible party of the option of an after-the-fact application for a permit to retain the unauthorized work. No permit will be required when complete and satisfactory restoration is accomplished.

(c) Acceptance of an after-the-fact application. Upon completion of appropriate remedial work, if any, the district engineer shall accept an application for an after-the-fact permit for all unauthorized activities unless:

(1) Civil action to enforce an order issued pursuant to §326.2 or §326.3(b) of this part is required;

(2) Criminal action is appropriate
(see §326.4(a)(1) of this part);

(3) State local, or other federal authorization or certification has been denied or a state or local enforcement action is pending. In the above situations, the District Engineer may accept an after-the-fact permit application provided he believes it would be in the public interest and he obtains approval of the next higher authority.

(d) If the responsible party fails to submit an application as noted in paragraph (c) of this section within a reasonable time period, the district engineer may proceed ~~on~~ his own initiative with a determination of whether the activity is in the public interest. The determination will be made in accordance with appropriate procedures described in 33 CFR Parts 320 through 325.

§326.4 Legal action.

(a) Criminal or civil action.

District engineers shall be guided by the following policies in recommending appropriate legal action:

(1) Criminal action. Criminal action is considered appropriate when the facts surrounding an unauthorized activity reveal the necessity for punitive action and/or when deterrence of future unauthorized activities in the area is considered essential to the establishment or maintenance of a viable regulatory program.

(2) Civil action. Civil action is considered appropriate when the evaluation of the unauthorized activity reveals that (i) enforcement of an order pursuant to §326.2 or §326.3(b) of this Part is required; (ii) after the procedures in §326.3 of this Part have been completed, unauthorized activity would be in the public interest if altered or modified but

attempts to secure voluntary alteration or modification have failed such that a judicial order is necessary, or (iii) after the procedures in §326.3(c) of this Part have been completed, a civil penalty under Section 309 of the Clean Water Act is warranted.

(c) Referral to local U.S. Attorney.

Except as provided in paragraph (d) of this section, district engineers are authorized to refer the following cases to the Department of Justice (DOJ) in accordance with procedures established by DOJ.

Information copies of all letters of referral which go directly to a U.S. Attorney shall be forwarded to the Chief of Engineers, ATTN: DAEN-CCK, for transmittal to the Chief, Pollution Control Section, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

(1) Unauthorized structures or work in or affecting navigable waters of the United States that fall exclusively within the purview of Section 10 of the River and Harbor Act of 1899 (see 33 CFR Part 322) for which a criminal fine or penalty under Section 12 of that Act (33 U.S.C. 406) is recommended.

(4) Cases for which a temporary restraining order and/or preliminary injunction is appropriate following non-compliance with a cease and desist order.

§326.5 Supervision and enforcement of authorized activities.

(a) Inspection and monitoring.

District engineers will assure that authorized activities are conducted and executed in conformance with approved plans and other conditions of the permits.

Appropriate inspections should be made on timely occasions during performance of the

activity and appropriate notices and instructions given permittees to insure that they do not depart from the approved plans. Reevaluation of a permit to assure compliance with its purposes and conditions will be carried out as provided in 33 CFR Part 325.7. If there are approved material departures from the authorized plans, the district engineer will require the permittee to furnish corrected plans showing the activity as actually performed.

(b) Non-compliance. Where the district engineer determines that there has been non-compliance with the terms or conditions of a permit, he should first contact the permittee and attempt to resolve the problem. If a mutually agreeable resolution cannot be reached, a written demand for compliance will be made. If the permittee has not agreed to comply within 5 days of receipt of the demand, the

district engineer will issue an immediately effective notice of suspension in accordance with 33 CFR Part 325.7(c) and consider initiation of appropriate legal action (§326.4 of this Part).

(c) Surveillance. For purposes of inspection of permitted activities and for surveillance of the waters of the United States for enforcement of the permit authorities the district engineer will use all means at his disposal. All Corps of Engineers employees will be instructed to observe and report all unauthorized activities in waters of the United States. The assistance of members of the public and personnel of other interested Federal, state and local agencies to observe and report such activities will be encouraged. To facilitate this surveillance, the district engineer will, in appropriate cases, require a copy of ENG Form 4336 to be posted conspicuously at the site of

authorized activities and will make available to all interested persons information on the scope of authorized activities and the conditions prescribed in the authorizations. Surveillance in ocean waters will be accomplished primarily by the Coast Guard pursuant to Section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(e) Where the unauthorized activity is determined not to be in the public interest, the notification of the denial of the permit will prescribe any corrective actions to be taken in connection with the work already accomplished, including restoration of those areas subject to denial, and establish a reasonable period of time for the applicant to complete such actions. The district engineer, after denial of the permit, will again consider whether to recommend civil and/or criminal

action in accordance with §326.4 of this Part.

(f) If the applicant declines to accept the proposed permit conditions, or fails to take corrective action prescribed in the notification of denial, or if the district engineer recommends legal action after denying the permit, the matter will be referred to the Chief of Engineers, Attn.: DAEN-CCK, with recommendations for appropriate action.

(g) Division and District Engineers are authorized and encouraged to develop joint surveillance and inspection procedures with other Federal, state, and local agencies with similar regulatory responsibilities and with other Federal, state and local agencies having special interest or expertise in the Corps regulatory program. However, any decision to initiate legal action or to require any restoration or other remedial work under

Corps of Engineers authority remains the
independent responsibility of the Division
or district engineer.

APPENDIX E

SUBCHAPTER C-AIDS TO NAVIGATION

PART 60-GENERAL

Subpart 60.01-General Provisions

Section 60.01-1 Purpose.

(a) The aids to navigation system of the United States is for the purpose of aiding navigation. That part of the system administered by the Coast Guard is to serve the needs of the Armed Forces and the commerce of the United States. This subchapter contains the rules, regulations and procedures related thereto.

Section 60.01-5 Definition of terms.

Certain terms as used in this subchapter are defined as follows:

(a) Aid to navigation. The term aid to navigation or aid, as used in this subchapter, means any device external to a vessel or aircraft intended to assist a navigator to determine his position or safe

course, or to warn him of dangers or obstructions to navigation.

(c) Commerce. The term commerce as used in this subchapter, in addition to the general national and international trade and commerce of the United States, includes trade and travel by seasonal passenger craft (marine and air), yachts, houseboats, fishing boats, motor boats, and other craft whether or not operated for hire or profit.

(d) Commandant. The term Commandant means the Commandant of the Coast Guard.

(e) Corps of Engineers. The term Corps of Engineers means the Corps of Engineers, Department of the Army.

(f) District Commander. The term District Commander means the Commander of a Coast Guard District.

(g) District Engineer. The term District Engineer means the District

Engineer, Corps of Engineers, Department of the Army.

(1) Navigable water. The term navigable water, singular or plural, means water navigable in fact which by itself, or by uniting with other waters, navigable in fact, forms a continuous highway over which interstate or international commerce may be conducted in the customary mode of trade and travel on water.

PART 62-UNITED STATES AIDS TO NAVIGATION SYSTEM

Subpart 62.01-Establishment of Aids to Navigation

Section 62.01-1 Maritime aids.

(a) The establishment, maintenance and operation of maritime aids to navigation, other than loran stations, to serve the needs of commerce of the United States may be authorized by the Commandant to mark the navigable waters of the United States, its territories and possessions, the Trust

States and, on the high seas, structures owned or operated by persons subject to the jurisdiction of the United States;

(2) Sunken vessels in the navigable waters or waters above the continental shelf of the United States; and

(3) Other obstructions existing on or in the navigable waters or waters above the continental shelf of the United States.

(b) The following obstructions are exempt from the requirements of this part:

(1) Dredging pipelines subject to Subchapter D of this chapter;

(2) Bridges subject to Subchapter J of this chapter;

(3) Vessels subject to the International Regulations for preventing Collisions at Sea, 1972 (1972 COLREGS) or the Inland Navigation Rules;

(4) Deepwater port facilities subject to subchapter NN of this chapter; and

Territory of the Pacific Islands and those waters on which aids to navigation have been established by the Coast guard prior to June 26, 1948.

(c) Any aid to navigation to be established, maintained and operated by the Coast Guard to serve the needs of commerce must be necessary for the safety of navigation, useful for commerce of a substantial and permanent character, and must be justified in terms of public benefit to be derived therefrom.

Section 62.01-25 Danger, restricted, and prohibited areas.

The Coast Guard may mark, at the request of the cognizant District Engineer, danger, restricted, and prohibited areas that have been so designated by the Secretary of the Army.

Subpart 62.15-Reporting Defects

Section 62.15-1 Procedure.

Mariners are requested to notify immediately the nearest District Commander of any defects observed in an aid to navigation. Experienced mariners realize that the Coast Guard cannot keep the thousands of aids to navigation comprising the Federal system under simultaneous and continuous observation and that, for this reason, it is impossible to maintain every buoy, day-beacon, light, fog signal and other aid operating properly and on its charted position at all times. Therefore, the safety of the mariner and that of all persons embarked or serving in vessels will be enhanced if every person who discovers an aid to be missing, sunk, capsized, or damaged, or who observes a defect in the position or characteristic of any aid, will promptly notify the Coast Guard of the fact. Radio messages should be prefixed "Coast

Guard" and transmitted directly to one of the United States Government shore radio stations listed under "Communication" in Section 400B of Radio Navigational Aids HO-117 for relay to the District Commander. If the radio call sign of the nearest United States Government radio shore station is not known, radio-telegraph communication may be established by the use of the general call "NCG" on the frequency of 500 kilocycles. Merchant ships may send messages relating to defects noted in aids to navigation through commercial facilities only when they are unable to contact a United States shore radio station. Charges for these messages will be accepted "collect" by the Coast Guard.

Subpart 62.20-Lights of Fixed Structures

Section 62.20-1 General.

Lights on fixed structures are aids to navigation placed on shore or on marine sites to assist a navigator to determine his

position or safe course, to mark channels and to warn him of dangers or obstructions to navigation. They are identified by their light color and flashing characteristics at night, and by the color and construction of the structure during day time. The location, description and characteristic of lights on fixed structures are published in the Light Lists.

PART 64-MARKING OF STRUCTURES,
SUNKEN VESSELS AND OTHER OBSTRUCTIONS

Subpart 64.01-General

Section 64.01-1 Purpose.

This part prescribes rules relating to the marking of structures, sunken vessels and other obstructions for the protection of maritime navigation.

Section 64.01-3 Scope.

(a) Except as provided in paragraph (b) of this section these rules apply to:

(1) Structures located in or over waters subject to the jurisdiction of the United

(5) Artificial islands and structures subject to Part 67 of this subchapter.

Section 64.01-6 Definition of terms.

As used in this part:

"Markings" means the lights and other signals placed on or near structures, sunken vessels, and other obstructions for the protection of navigation.

"Structures" means any fixed or floating obstruction, intentionally placed in the water, which may interfere with or restrict marine navigation.

Subpart 64.10-Sunken Vessels and Other Obstructions

Section 64.10-1 Marking and notification requirements

(a) The owner of a vessel, raft or other craft wrecked and sunk in a navigable channel is required by 33 U.S.C. 409 to mark it immediately with a buoy or daymark during the day and with a light at night. The courts have interpreted the statute very broadly,

holding that it is not to be applied to vessels only and that "navigable channel" is not limited to those channels marked by buoys or other aids to navigation. Sunken vessels and other obstructions should be marked whenever they constitute a hazard to navigation.

(c) Owners of other obstructions may report the existence of such obstructions and mark them in the same manner as prescribed for sunken vessels.

Section 64.10-3 Approval of markings.

(a) All markings of sunken vessels and other obstructions established in accordance with Section 64.10-1 must be reported to and approved by the appropriate District Commander.

(b) Should the District Commander determine that these markings are inconsistent with Part 62 of this subchapter, they must be replaced as soon as practicable with approved markings.

Section 64.10-6 Duration of marking on sunken vessels in navigable waters.

Markings shall be maintained until:

- (a) The sunken vessel or other obstruction is removed; or
- (b) The right of the owner to abandon is legally established and exercised.

Subpart 64.20-Structures

Section 64.20-1 Marking and notification requirements.

Before establishing a structure, the owner or operator shall apply for Coast Guard authorization to mark the structure in accordance with Section 66.01-5 of this chapter. The appropriate District Commander will determine the marking requirements.

Section 64.20-3 Duration of marking on structures.

Marking determined to be required shall be established and maintained until:

- (a) The structure is removed; or
- (b) Otherwise directed by the District Commander.

Subpart 64.30-Miscellaneous Provisions

Section 64.30-1 Determination of marking necessity.

(a) In determining the necessity of marking for the protection of maritime navigation, the District Commander considers, but is not limited to, the following:

(1) Physical characteristics of the obstruction;

(2) Depth of water in which it is located;

(3) Proximity of the obstruction to historic or designated vessel routes;

(4) Proximity of the obstruction to other obstructions or aids to navigation; and

(5) Type of vessel traffic at the obstruction site.

Section 64.30-3 Marking by the Coast Guard.

(a) The District Commander may mark for the protection of maritime navigation any structure, sunken vessel or other obstruction that is not suitably marked by the owner.

United States shall display the lights and other signals for the protection of maritime navigation as may be prescribed by the Commandant. The prescribed lights and signals shall be installed, maintained and operated by and at the expense of the owner, or operator. After obtaining such approval or a statement of no objection from the Corps of Engineers as is required by law, the owner or operator shall apply in accordance with Section 66.01-5 to the District Commander having jurisdiction over the waters in which the structure or floating obstruction will be located for a determination of the lights and other signals to be displayed. This requirement includes the temporary lights and signals to be displayed during the construction of a structure. If no regulation exists prescribing the lights or other signals required to mark any work or obstruction, each case shall be considered

individually by the District Commander, who will prescribe such lights and signals as he considers necessary for the safety of navigation.

Subpart 66.05-State Aids to Navigation

Section 66.05-1 Purpose.

(a) The purpose of the regulations in this subpart and Subpart 66.10 of this part is to prescribe the conditions under which State governments may regulate aids to marine navigation, including regulatory markers, owned by State or local governments or private parties, in navigable waters of the United States not marked with aids by the Federal Government; and to prescribe a uniform system of marine aids to navigation compatible with the United States lateral system of buoyage to which all aids to navigation regulated by a State government shall conform, except when they conform to

the lateral system. The United States lateral system is described in Part 62 of this subchapter.

Section 66.05-5 Definition of terms used in this subpart and Subpart 66.10.

(a) The term "State waters for private aids to navigation" means those navigable waters of the United States which the Commandant, upon request of a State Administrator, has designated as waters within which a State government may regulate the establishment, operation, and maintenance of marine aids to navigation, including regulatory markers. The Commandant will entertain requests to make such designations with respect to navigable waters of the United States not marked by the Federal government. These designations when approved will be set forth in separate sections by States in this subpart and will briefly describe or identify waters so designated.

(b) The term "Uniform State Waterway Marking System" (USWMS) means the system of private aids to navigation, including regulatory markers, which may be operated in State waters for private aids to navigation. Subpart 66.10 of this part describes the Uniform State Waterway Marking System.

(c) The term "State Administrator" means the official of a State having power under the law of the State to regulate, establish, operate or maintain maritime aids to navigation on waters over which the State has jurisdiction.

(d) The term "State aids to navigation" means all private marine aids to navigation operated in State waters for private aids to navigation, whether owned by a State, political subdivisions thereof or by individuals, corporations, or organizations.

(e) The term "regulate State maritime aids to navigation" means to control the

establishment, disestablishment, operation and maintenance of State aids to navigation.

Section 66.05-10 State waters for private aids to navigation; designations; revisions, and revocations.

(a) A State Administrator who desires to regulate State maritime aids to navigation in the navigable waters of the United States not marked by the Federal Government, shall request the Commandant to designate the specific bodies of water involved as State waters for private aids to navigation.

(b) The request shall be forwarded to the District Commander in whose district the bodies of water are located. The request shall give the name and description of the waterway; the extent of use being made of the waterway for marine navigation, in general terms; an appropriate chart or sketch of the area; and a general outline of the nature and extent of the State aids to navigation which

Markings established by the Coast Guard do not relieve the owner's duty or responsibility to mark the sunken vessel or other obstruction, or to remove it as required by law.

(b) Costs for markings established by the Coast Guard will be determined in accordance with Part 74 of this Chapter.

(c) Costs for marking of a sunken vessel or other obstruction shall be charged to the owner and shall continue until:

(1) The vessel or other obstruction is removed;

(2) The right of the owner to abandon is legally established and has been exercised; or

(3) The District Commander directs otherwise.

Section 66.01-35 Marking of structures and floating obstructions.

Any structure, mooring, mooring buoy, or dam, in or over the navigable waters of the

the Administrator plans to establish in the waterway.

(c) The District Commander shall review the request and consult with the State Administrator concerning the terms of an initial agreement to be entered into under provisions of Section 66.05-20. When they have arrived at terms of an agreement satisfactory to both, the District Commander shall forward the request to the Commandant with his recommendations and the terms of agreement mutually settled upon. If they cannot reach such agreement, the District Commander shall forward the request with his recommendations and a statement of the points agreed upon and the points remaining at issue.

(d) Upon receipt of the request, the Commandant will determine whether or not approval of the request is in the public interest and will inform the State

Administrator and the District Commander of the Coast Guard's decision. If the request is approved, the designation by the Commandant of the waters in question as State waters for private aids to navigation will be also defined and described in this subpart.

(e) The Commandant may, upon his own initiative or upon request, revoke or revise any designations of State waters for private aids to navigation previously made by him. Written notice shall be given the State Administrator of the action contemplated by the Commandant. The State Administrator will be afforded a period of not less than 30 days from the date of the notice in which to inform the Commandant of the State's views in the matter before final action is completed to revoke or revise such designation.

Section 66.05-20 Coast Guard-State agreements.

(a) The District Commander in whose District a waterway is located may enter into

agreements with State Administrators permitting a State to regulate aids to navigation, including regulatory markers, in State waters for private aids to navigation, as, in the opinion of the District Commander, the State is able to do in a manner to improve the safety of navigation. When a waterway is located within the area of jurisdiction of more than one Coast Guard District, the District Commander in whose District the State capital is located shall execute the agreement in behalf of the Coast Guard. All such agreements shall reserve to the District Commander the right to inspect the state aids to navigation at any time without prior notice to the State. They shall stipulate that State aids to navigation will conform to the Uniform State Waterway Marking System or to the lateral system buoyage and that the State Administrator will modify or remove State aids to navigation

without expense to the United States when so directed by the District Commander, subject to the right of appeal on the part of the State Administrator to the Commandant.

(b) A Coast Guard-State agreement shall become effective when both parties have signed the agreements. In lieu of the procedure prescribed in Section 66.01-5, the agreement shall constitute blanket approval by the Commandant of the State aids to navigation, including regulatory markers, established or to be established in State waters for private aids to navigation designated or to be designated by the Commandant.

(c) In addition to the matters set forth in paragraph (a) of this section, Coast Guard-State agreements shall cover the following points, together with such other matters as the parties find it desirable to include:

(1) A description, in sufficient detail for publication in Notices to Mariners, of all aids to navigation under State jurisdiction in navigable waters of the United States in existence prior to the effective date of the agreement which have not been previously approved under the procedures of Section 66.01-5.

(2) Procedures for use by the State Administrator to notify the District Commander of changes made in State aids to navigation, as required by Section 66.05-25.

(3) Specification of the marking system to be used, whether the lateral system or the Uniform State Waterway Marking System, or both.

(4) Specification of standards as to minimum size and shape of markers, the use of identifying letters, the use of reflectors or retroreflective materials, and any other

similar standards so as to enable Coast Guard inspectors to determine compliance with Statewide standards.

Section 66.05-25 Change modification of State aids to navigation.

(a) Wherever a State Administrator shall determine the need for change in State aids to navigation, he shall inform the District Commander of the nature and extent of the changes as soon as possible, preferably not less than 30 days in advance of making the changes.

Section 66.05-35 Private aids to navigation other than State owned.

(a) No person, public body or other instrumentality not under control of the Commandant or the State Administrator, exclusive of the Armed Forces of the United States, shall establish, erect or maintain in State waters for private aids to navigation any aid to navigation without first obtaining permission to do so from the State Admin-

istrator. Discontinuance of any State aids to navigation may be effected by order of the State Administrator.

Secton 66.05-40 Corps of Engineers' approval.

(a) In each instance where a regulatory marker is to be established in navigable waters of the United States which have been designated by the Commandant as State waters for private aids to navigation, the State Administrator is responsible for obtaining prior permission from the District Engineer, U.S. Army Corps of Engineers concerned, authorizing the State to regulate the water area involved, or a statement that there is no objection to the proposed regulation of the water area. A copy of the Corps of Engineers permit or letter of authority shall be provided by the Administrator to the District Commander upon request.

(b) Similarly, where an aid to navigation is to be placed on a fixed structure or a mooring buoy is to be established in State waters for private aids to navigation, the State Administrator shall assure that prior permission or a statement of no objection to the structures or mooring buoys proposed is obtained from the District Engineer concerned. A copy of the permit or letter is not required by the District Commander.